

## **Assembly Bill No. 594**

### **CHAPTER 790**

An act to add Section 2828 to the Public Utilities Code, relating to private energy producers.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 25, 2004.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

**AB 594, Leno. Private energy producers: Hetch Hetchy Water and Power solar generation.**

Under existing law, the Public Utilities Commission is vested with regulatory authority over public utilities. Existing law permits a private energy producer to generate electricity not generated from conventional sources, as defined, solely for its own use or the use of its tenants, or generating electricity to or for any electrical corporation, state agency, city, county, district, or an association thereof, but not the public, without becoming a public utility subject to the general jurisdiction of the commission. Existing law requires the commission to review the charges paid by electrical corporations to private energy producers for electricity generated by other than conventional power sources and to review standby and transmission charges imposed by electrical corporations upon the private energy producers. The commission is further required, after the review, to adjust those charges to encourage the generation of electricity from other than conventional power sources. Existing law authorizes the City of Davis to receive a bill credit, as defined, to a benefiting account, as defined, for electricity supplied to the electric grid by a photovoltaic facility located within and partially owned by the city and requires the commission to adopt a rate tariff for the benefiting account.

This bill would authorize the City and County of San Francisco to elect to designate specific photovoltaic generation facilities meeting specified conditions as Hetch Hetchy Water and Power (HHWP) solar generation facilities, and upon election and the filing and acceptance of an advice letter with the commission establishing rates, Pacific Gas and Electric Company would be required on a monthly basis, to credit the City and County of San Francisco for certain electricity generated and delivered to the electric grid in accordance with specified rate criteria. The bill would provide for the termination of this arrangement upon notice from the city and county or upon the city and county engaging in retail sales to customers within the service territory of Pacific Gas and

Electric Company, as a result of becoming a community choice aggregator, as a result of municipalization, or otherwise.

Under existing law, a violation of the Public Utilities Act, a filed tariff, or an order of the commission is a crime.

Because the provisions of the bill would require an order or other action of the commission to implement those provisions, a violation of that order or action would be a crime, and thereby the bill would impose a state-mandated local program by creating a new crime.

The bill would declare that, due to the special circumstances applicable only to HHWP solar generation facilities, a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution, and the enactment of a special statute is therefore necessary.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. The Legislature finds and declares each of the following:

(a) Increasing California's use of solar generated electricity can promote stable electricity prices, protect public health, improve environmental quality, create new employment opportunities, and reduce reliance on fossil fuels.

(b) Electricity for municipal facilities of the City and County of San Francisco is provided by Hetch Hetchy Water and Power through electric transmission and distribution lines owned by Pacific Gas and Electric Company. This situation is unique to the City and County of San Francisco.

(c) The City and County of San Francisco has declared its intention to become a community choice aggregator, but until the City and County of San Francisco begins to procure electricity pursuant to implementation of community choice aggregation, the City and County of San Francisco has no acceptable mechanism to market the temporarily existing excess generation of proposed photovoltaic projects to be located at San Francisco municipal sites and which may on occasion exceed the load at the site.

(d) San Francisco is located in a transmission constrained area that currently requires local generation. Development of solar electric



facilities in San Francisco can improve electric service reliability and lessen air pollution from fossil fuel powerplants located in the city and county.

(e) Compensation for the electricity produced from Hetch Hetchy Water and Power solar generation facilities are in the public interest.

SEC. 2. Section 2828 is added to the Public Utilities Code, to read:

2828. (a) As used in this section, the following terms have the following meanings:

(1) “Environmental attributes” associated with the Hetch Hetchy Water and Power solar generation include, but are not limited to, the credits, benefits, emissions reductions, environmental air quality credits, and emissions reduction credits, offsets, and allowances, however entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance attributable to the Hetch Hetchy Water and Power photovoltaic electricity generation facility owned by the City and County of San Francisco.

(2) “HHWP solar generation” means the electricity generated by Hetch Hetchy Water and Power photovoltaic electricity generation facilities owned by the City and County of San Francisco, designated by the City and County of San Francisco pursuant to subdivision (b) and not to exceed five megawatts of peak generation capacity in total.

(3) “Interconnection Agreement” means the 1987 agreement between Pacific Gas and Electric Company and the City and County of San Francisco, as filed with and accepted by the Federal Energy Regulatory Commission (FERC), and as amended from time to time with FERC approval, which provides for rates for transmission, distribution, and sales of supplemental electricity to the City and County of San Francisco. Nothing in this section shall waive or modify the rights of parties under the Interconnection Agreement or the jurisdiction of the FERC over rates set forth in the Interconnection Agreement.

(4) “Appropriate TOU tariff” means the Time-of-Use tariff that would be applicable to the City and County of San Francisco account at the photovoltaic project site if the facility at the site were a Pacific Gas and Electric Company bundled customer, as determined by Pacific Gas and Electric Company.

(b) The City and County of San Francisco may elect to designate specific photovoltaic electricity generation facilities as HHWP solar generation, if all of the following conditions are met:

(1) No single photovoltaic generation project exceeds one megawatt of peak generation capacity.

(2) The photovoltaic project utilizes a meter, or multiple meters, capable of separately measuring electricity flow in both directions. All meters shall provide “time-of-use” measurement information. If the



existing meter at the site of the photovoltaic project is not capable of providing time-of-use information or is not capable of separately measuring total flow of energy in both directions, the City and County of San Francisco is responsible for all expenses involved in purchasing and installing a meter or meters that are both capable of providing time-of-use information and able to separately measure total electricity flow in both directions.

(3) The amount of all electricity delivered to the electric grid by the designated HHWP solar generation is the property of Pacific Gas and Electric Company.

(4) The City and County of San Francisco does not sell electricity delivered to the electric grid from the designated HHWP solar generation to a third party.

(5) Ownership and use of the environmental attributes associated with the electricity delivered to the electric grid by HHWP solar generation shall be determined by the commission in accordance with Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1.

(c) For each site of a photovoltaic project that comprises the HHWP solar generation, Pacific Gas and Electric Company shall identify the appropriate TOU tariff for that site. Any electricity exported to the Pacific Gas and Electric Company grid at that site shall, for each time-of-use period, result in a monetary credit to be applied monthly as a credit or offset against the invoice created pursuant to the Interconnection Agreement and shall be valued at the generation component of the appropriate TOU tariff. The commission shall determine if it is appropriate to increase the credit to reflect any additional value derived from the location or the environmental attributes of, the designated HHWP solar generation.

(d) Monthly charges and credit amounts are interim and subject to an accounting true-up, consistent with commission policies and practices. The true-up shall be performed annually or upon the termination, for any reason, of the Interconnection Agreement. The true-up shall accomplish the following:

(1) If the total electricity delivered to the site by Pacific Gas and Electric Company since the previous true-up equals or exceeds the total electricity exported to the grid by the Hetch Hetchy photovoltaic electricity generation facility at the site, the City and County of San Francisco is a net electricity consumer at that site. For any site where the City and County of San Francisco is a net electricity consumer, a credit or offset shall be applied to reduce the obligations of the City and County of San Francisco to an invoice prepared pursuant to the Interconnection Agreement. If there is no invoiced obligation to be reduced, there is no applicable credit.



(2) If the total electricity delivered to the site by Pacific Gas and Electric Company since the previous true-up is less than the total electricity exported to the grid by the Hetch Hetchy photovoltaic electricity generation facility at the site, the City and County of San Francisco is a net electricity producer at that site. For any site where the City and County of San Francisco is a net electricity producer, the City and County of San Francisco shall receive no credit or offset for the electricity exported to the grid in excess of the electricity delivered to the site from the grid. For any site where the City and County of San Francisco is a net electricity producer, the City and County of San Francisco shall receive a credit or offset up to the amount of electricity delivered to the site from the grid. The credit or offset shall be applied to reduce the obligations of the City and County of San Francisco to an invoice prepared pursuant to the Interconnection Agreement. If there is no invoiced obligation to be reduced, there is no applicable credit or offset. Pacific Gas and Electric Company shall use the last-in, first-out method to determine what electricity delivered to the grid from the site will not earn a credit or offset.

(e) Notwithstanding any other provision of this section, if the City and County of San Francisco engages in retail sales to customers within the service territory of Pacific Gas and Electric Company, as a result of becoming a community choice aggregator, as a result of municipalization, or otherwise, all other provisions of this section become inoperative.

(f) Pursuant to this section, the offset to charges under the Interconnection Agreement is the medium to convey credits earned under this section. Nothing in this section shall be construed to affect in any way the rights and obligations of the City and County of San Francisco and Pacific Gas and Electric Company under the Interconnection Agreement.

(g) Pacific Gas and Electric Company shall file an advice letter with the commission, that complies with this section, not later than 10 days after the City and County of San Francisco first designates the specific generation facilities that will comprise HHWP solar generation. The commission, within 30 days of the date of filing of the advice letter, shall approve the advice letter or specify conforming changes to be made by Pacific Gas and Electric Company to be filed in an amended advice letter within 30 days.

(h) The City and County of San Francisco may terminate its election pursuant to subdivisions (b), (c), and (d), upon providing Pacific Gas and Electric Company with a minimum of 60 days' written notice.

SEC. 3. The Legislature finds and declares that, because of the unique circumstances applicable only to Hetch Hetchy Water and Power



solar generation of electricity, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution. Therefore, this special statute is necessary.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

